United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLEE

Orig. w/ affidavit of mailing

76-6171

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To be argued by
CONSTANCE M. VECELLIO

P/S

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-6171

NAPOLEON RICHARDSON and FRANCISCO CHAIMOWICZ, as Executors of the Estate of CONCEPCION BRODERMANN STUETZEL, also known as CONCEPCION BRODERMANN,
Plaintiffs-Appellants,

—against—

WILLIAM E. SIMON, as Secretary of the Treasury of the United States, and the BANK OF NOVA SCOTIA,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

BRIEF FOR DEFENDANT-APPELLEE SIMON

DAVID G. TRAGER,
United States Attorney,
Eastern District of New York,
Attorney for Defendant-Appellee Simon,
225 Cadman Plaza East,
Brooklyn, New York 11201.

ALVIN A. SCHALL,
CONSTANCE M. VECELLIO,
Assistant United States Attorneys,

JONATHAN B. SMITH,
Attorney, Department of Justice,
Of Counsel.

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BRIEF FOR DEFENDANT-APPELLEE SIMON

Preliminary Statement

This is an appeal by plaintiffs Napoleon Richardson and Francisco Chaimowicz, as executors of the estate of Concepcion Brodermann Stuetzel, from an order and judgment of the United States District Court for the Eastern District of New York (Platt, *J.*) entered on October 8, 1976. Plaintiffs, in a complaint filed on March 19, 1976, had requested an order directing defendant Simon, as Secretary of the Treasury of the United States, to issue a license unblocking certain assets held by the defendant Bank of Nova Scotia. The assets were blocked pursuant to the Cuban Assets Control Regulations, formulated and administered through the Secretary

of the Treasury. The order of October 8th granted defendant Simon's motion to dismiss the complaint and denied plaintiffs' cross-motion for summary judgment.

Statement of Facts

The following facts, alleged by plaintiffs in their complaint, were admitted by defendant Simon for purposes of his motion to dismiss.[1]

The plaintiffs are the executors of the estate of Concepcion Brodermann Stuetzel who died in New York State in October of 1971. Mrs. Stuetzel was born in Cuba and resided there most of her life. Her husband, Carl W. Stuetzel, had died intestate in Cuba on August 24, 1965. Mrs. Stuetzel was his only heir at law. Prior to Mr. Stuetzel's death, the Secretary of Treasury of the United States had promulgated the Cuban Assets Control Regulations, 31 C.F.R. Part 515, which became effective on July 8, 1963. These regulations provided for the blocking of assets in the United States in which Cuban nationals had an interest. Mr. and Mrs. Stuetzel had, prior to the promulgation of the Regulations, placed cash and stock certificates of Standard Oil Company of New Jersey in a joint account in a branch of the Bank of Nova Scotia in New York City.

On October 13, 1969, Mrs. Stuetzel entered the United States as a permanent resident. Shortly thereafter she applied for a license to unblock the property in the above-

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[1] See p. 2 of Defendant Simon's Memorandum in Support of his Motion to Dismiss, p. 6 of Record on Appeal. Defendant Simon did not admit these facts for purposes of plaintiffs' motion for summary judgment. See Statement pursuant to Rule 9(g) of the Local Rules, Appendix p. 25.

described account in the Bank of Nova Scotia. On December 12, 1969, a license was issued by the terms of which 50% of the blocked assets were released to Mrs. Stuetzel.[2] (Appendix 6). The balance of the account remained blocked in the name of Carl W. Stuetzel.

After Mrs. Stuetzel's death in 1971, plaintiffs applied to the Secretary of the Treasury for a license unblocking the remaining assets held by the Bank of Nova Scotia.[3] The application alleged that Mrs. Stuetzel's will had been admitted to probate by the Surrogate's Court of Nassau County and that, under the terms of the will, her residuary estate was devised to Elena Richardson,[4] her niece. (Appendix 7). This application was denied. On March 19, 1976, the plaintiffs instituted the action in the United States District Court for the Eastern District of New York which resulted in the ruling which they now appeal.

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[2] This license and the policy behind it are not in issue here. The license was issued under a policy of unblocking assets of resident Cuban refugees which they owned prior to July 8, 1963, the date on which Cuban assets in this country were frozen. There was a presumption of an individed half interest in the assets in favor of Mrs. Stuetzel on the basis of the Cuban community property law. See 31 CFR § 515.525(a).

[3] According to an affidavit submitted by the Bank's attorney, the cash balance of the account on March 16, 1976 was $13,547.74 and, on April 2, 1976, the Bank was holding 770 shares of the stock of Exxon Corporation for the account. (Appendix 17).

[4] Although the license does not make the allegation, the complaint alleges that Elena Richardson is a citizen of the United States residing in the State of New York. (Appendix 3).

ARGUMENT

POINT I

The District Court was correct in holding that the Regulations which require the continued blocking of assets of a Cuban national following his death are authorized by the Trading with the Enemy Act.

Plaintiffs admit that the Cuban Assets Control Regulations do prohibit any transfer of Carl Stuetzel's assets in this country. They assert, however, that such a prohibition is not authorized by the Trading with the Enemy Act. The government contends, on the contrary, that the prohibition is necessary to carry out the purposes of the Act.

The Regulations prohibit,

> (b) . . . the following transactions . . . except as authorized by the Secretary of the Treasury . . . *if such transactions involve property in which any foreign country designated under this part, or any national thereof, has at any time on or since the effective date of this section had any interest* of any nature whatsoever, direct or indirect: (1) *All dealings in, including, without limitation, transfers,* withdrawals, or exportations of, any property . . . by any person subject to the jurisdiction of the United States;
>
> * * *
>
> (d) For the purposes of this part, the term "foreign country designated under this part" and the term "designated foreign country" mean Cuba and the term "effect date" and the term "effective date of this section" mean with respect to Cuba, or any national thereof, 12:01 a.m., e.s.t., July 8, 1963. 31 CFR § 515.201 [Emphasis added].

Since it is undisputed that Carl Stuetzel was, on July 8, 1963, a national of Cuba,[5] it is clear that any transfer of the property which is the subject of this suit and which was being held in New York by the Bank of Nova Scotia on July 8, 1963, for Mr. Stuetzel was prohibited as of that date. Furthermore, 31 C.F.R. § 515.407 specifically interprets 31 C.F.R. § 515.201, as prohibiting "*all transactions incident to administration of the blocked estate of a decedent*, including . . . distribution to beneficiaries." (Emphasis added). "Blocked estate of a decedent" is defined as any decedent's estate in which a "designated national" has an interest, and a person is deemed to have an interest in a decedent's estate if he was the decedent. 31 C.F.R. § 515.327. Stuetzel was a designated national (31 C.F.R. § 515.305) on the effective date of the Regulations and at the time of his death. Thus, the Regulations provide that his assets in this country will remain blocked after his death.

Although 31 C.F.R. § 515.525 allows transfer of blocked assets by intestate succession, such transfers are limited by the following proviso contained in that section:

> (b) Except to the limited extent authorized by § 515.523 . . . no transfer to any person by intestate succession . . . shall be deemed to terminate the interest of the decedent in the property transferred if the decedent was a designated national.[6]

The Cuban Assets Control Regulations were promulgated pursuant to Section 5(b) of the Trading with the

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[5] A national is defined in 31 CFR § 515.302.

[6] The exceptions contained in § 515.523 are not applicable in this case.

Enemy Act, 50 App. U.S.C. § 5(b) which provides in pertinent part, as follows:

> (b) (1) During the time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—
>
> * * * * *
>
> (B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, *any property in which any foreign country or a national thereof has any interest*, by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; (emphasis added).

Plaintiffs claim that the property which is the subject of this action is no longer "property in which any foreign country or a national thereof has any interest," within

the meaning of the Trading with the Enemy Act, and hence that the Regulations which prohibit any transfer of this property are invalid because they are in excess of the statutory authority for such a prohibition. However, the United States submits that the relevant date for determining for purposes of the Trading with the Enemy Act whether property is "property in which any foreign country or a national thereof has any interest" is the date on which transfer of such property was prohibited, whether by "freezing" or by vesting title in a representative of the United States. Indeed, the government submits that the use of a later date in determining whether property is property in which a foreign national has an interest would greatly undermine the purposes of the Trading with the Enemy Act. Thus, with respect to the property involved in this case, July 8, 1963, is, we believes the date which must be used in determining whether that property is "property in which any foreign country or a national thereof has any interest."

Plaintiffs rely upon *Real* v. *Simon*, 510 F.2d 557 (5th Cir. 1975), *rehearing denied*, 514 F.2d 738, in which the Fifth Circuit implicitly concluded, without specifically discussing the point, that, for purposes of the Trading with the Enemy Act, the relevant date for determining whether a foreign national has an interest in property in this country is the date of the purported transfer of that property. In *Real*, as in the case at bar, the purported transfer was a transfer by intestate succession, and the Court determined that the decedent's interest in the property ceased at the time of his death, and thus that the property could be transferred. But is clear that this analysis would defeat most if not all, of the purposes of the Trading with the Enemy Act as they were enunciated by the Court in *Real*:

> "(1) to deny Cuba or its nationals hard currency which might be used to promote activities inimical

> to the interest of the United States; (2) to retain blocked funds for possible use or vesting to the United States should such a decision be made; and (3) to use blocked funds for negotiations purposes in discussions with the Cuban government." 510 F.2d at 563 (footnotes omitted).

It is obvious that an interpretation of the Act which results in the release of some portion of the funds which were originally blocked would defeat the purposes of retaining "blocked funds for possible use or vesting to the United States" or "for negotiation purposes in discussions with the Cuban government." The recognition of the transfer of blocked property to American residents by testate or intestate succession would gradually deplete the size of the total fund of blocked Cuban assets. The Court in *Real* noted that, as of July 8, 1963, $148.8 million of Cuban assets in the United States were blocked. It can reasonably be assumed that a substantial and increasing portion of this fund is affected by the *Real* decision since, with the passage of time, many Cubans have died and their heirs have become American residents, and the decision will gradually deplete the fund further as time goes on. The United States has claims against Cuba in excess of $1.5 billion for illegal expropriation of private American property in Cuba without compensation. The effect of a reduction of the total Cuban assets on a possible claims settlement program is obvious; the effect on the use of the fund as a bargaining tool is similarly obvious.

In *Propper* v. *Clark*, 337 U.S. 472, 484 (1949), the Supreme Court, in a case involving a World War II freeze o upon which the regulations applicable here were m d, discussed the purposes of the Trading with the ny Act:

> "The freezing order of June 14, 1941 immobilized the assets covered by its terms so that title to them might not shift from person to person . . . until the Government could determine whether those assets were needed . . . to compensate our citizens or ourselves for the damage done by the government of the nationals affected."

The Court in *Propper* noted that this was the effect of the Trading with the Enemy Act even though such immobilization of assets sometimes causes hardships for "our citizens and others who, as here, are not involved in any actions adverse to the nation's interest." 337 U.S. at 481.

The case law arising from the various blocking actions taken under the Trading with the Enemy Act indicates that Courts have recognized the importance of determining interest in the property as of the date of the blocking. Section 39 of the Trading with the Enemy Act, 50 App. U.S.C. §39, provides that "no property or interest therein of Germany or Japan, or any national of either such country", which had been vested in an officer or agency of the United States after December 17, 1941, shall be returned or that any compensation be paid for the taking of enemy property. (The proceeds of the sale of property was to be used to pay war claims against enemy countries.) However, Section 9(a) of the Act provides that "[a]ny person not an enemy . . . claiming any interest, right, or title in any money or other property which may have been conveyed . . . to the Alien Property Custodian" could file a claim for the return of his property. In *Schill* v. *McGrath*, 89 F. Supp. 339 (S.D.N.Y. 1950), a suit to recover confiscated property, plaintiff who was a German citizen until 1949, conceded that he was an "enemy" within the meaning of the Act when vesting orders were executed with re-

spect to his property, in 1942 and 1943. However, plaintiff had become a United States Citizen on January 24, 1949 and had subsequently instituted suit to regain his property under Section 9 of the Act, alleging that he was a "person not an enemy." He argued that Section 39, which prohibited the return to *German nationals* of property vested after December 17, 1941 "was not intended to foreclose those who are now American citizens but were not such at the time the property vested. . . ." 89 F. Supp. at 342. However, the court, in granting summary judgment for the government, stated that:

> "[s]ection 39 is directed at property rather than claimants, and it is the status of property when vested rather than the status of the claimant which is controlling." 89 F. Supp. at 342.

In other actions under Section 9 of the Act, plaintiffs contended that their property should be returned to them because their previous enemy status had been removed before the date of vesting of their properties. The courts denied these claims. See *N.V. Handelsbureau La Mola* v. *Kennedy*, 299 F.2 923 (D.C. Cir. 1962), *cert. denied*, 370 U.S. 940 (1962); *Kennedy* v. *Rommel*, 301 F.2d 544 (D.C. Cir. 1962); *Kennedy* v. *Christian-Onken*, 301 F.2d 546 (D.C. Cir. 1962). The relevant point was whether an enemy interest existed in the property involved *as of December 17, 1941*, the date on which such property became subject to vesting. A subsequent change in the "enemy" status of the person who had been the owner of the property, could not defeat vesting. In one of those cases, the court reasoned as follows:

> The purposes of the Act are not fulfilled if all vesting and seizure must be accomplished during hostilities or enemy occupation. . . . For example, the Custodian might not discover the property during the period of enemy occupation or, if dis-

covered during such period, investigation might entail a considerable period of time before a determination is made that the property is owned or controlled by an enemy within the meaning of section 2 and therefore subject to seizure. Its usefulness to the enemy is not thereby obviated. Rather the contrary. Yet to immunize it because for some reason the vesting authority failed to reduce it to possession until hostilities have ceased, or the occupation ended, would leave untouched property which had been available to enemy control. Such immunization would also deprive the United States of valuable means of supporting its own war efforts. Those efforts, and the heavy responsibilities consequent upon a war, persist long after hostilities have ceased and occupied countries have been freed of the enemy.

* * * * *

[T]he definition of enemy in section 2 of the Act, as one who is "resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war" or "incorporated within such territory" is not to be construed as referring only to one who at the date of the vesting order is a resident of or chartered by a nation with which the United States "is (still) at war"; rather, it is to be construed as including a person who or corporation which, at the time of the vesting order, is one who has been a resident of an enemy occupied nation during its occupation or was then incorporated under the laws of an occupied territory and resident therein.

* * * * *

The constitutionality of confiscating enemy property in carrying out the war powers of course

> is not questioned. A reasonable exercise of this aspect to the war powers permits the United States to reach property located within its borders which was available to or whose owner was under the control of the enemy while resident within occupied territory. To require as a constitutional matter that the property be actually vested during the occupation or before the end of hostilities would create a very substantial limitation upon the economics of warfare. *N.V. Handelsbureau La Mola, supra,* at 925-927.

The above discussion points out a second problem raised by the *Real* decision. Since the Constitutional and statutory authority for confiscating enemy property and vesting title thereto in the government is clear, the *Real* decision might force the executive to order *vesting* of enemy property immediately on the effective date; the executive could thus avoid the gradual depletion of the fund of *frozen* assets which the *Real* decision allows.

However, it might be preferable from the point of view of the national interest to hold Cuban property in frozen status rather than vesting at the outset of the blocking for a variety of reasons. Blocking affects the economy of the country to which it is applied. This may lead to a subsequent change in the government of the blocked country. A successor government might be a friendly government which would voluntarily assume the obligation of settling claims in full, perhaps even reversing uncompensated nationalizations. In such event, it would be preferable from the national point of view to simply unblock assets, restoring free disposition to their Cuban owners. This is clearly more desirable than premature immediate vesting of blocked assets. The assets may be inadequate in total amount for a claims program and a negotiated settlement might be preferable.

Even if no change were to occur in the hostile regime of the blocked country, there may in due course be some sort of settlement by which that country would obligate itself to pay American claims, while the United States unblocks the frozen assets for free disposition by their owners. Another possibility might be to use some or all of the blocked assets in a claims settlement program. Which of these settlement procedures will be followed could not be known when the blocking was imposed and indeed is not known at this moment.

If the *Real* decision were to be followed, the result could thus leave the United States with only one option, i.e., to vest at the outset, in order to ensure that sizable amounts of blocked property are not subsequently unblocked by the death of persons who happen to have American heirs. Such a result illustrates the inherent disadvantages of random judicial decisions disposing of the blocked assets. This procedure was criticized in *Banco Nacinonal de Cuba* v. *Sabbatino*, 376 U.S. 398, 412 (1964) where the Supreme Court explicitly acknowledged the political nature of the program:

> "The freezing of Cuban Assets exemplifies the capacity of the political branches to assure, through a variety of techniques . . ., that the national interest is protected. . . ."

In order that the Legislative and Executive branches are accorded the use of a "variety of techniques," rather than being forced to vest title immediately, it is submitted that the courts should accord wide discretion to the executive branch in its choice of techniques by which to effectuate the Trading with the Enemy Act. In *United States* v. *Curtis Wright Export Co.*, 299 U.S. 304, 320, (1936) the Supreme Court noted that:

> "if, in the maintenance of our international relations, embarrassment—perhaps serious embarrassment—is to be avoided and success for our aims

> achieved, congressional legislation which is to be made effective through negotiation and inquiry within the international field must often accord to the President a degree of discretion and freedom from statutory restriction which would not be admissible were domestic affairs alone involved."

The government submits that the Trading with the Enemy Act in fact delegates broad discretion to the executive branch as to the exact implementation of its policies, and that the Regulations at issue in the case at bar are clearly within the authority delegated by that Act. Furthermore, it is well established that there is a presumption that action by an agency in interpreting and applying its own statutes and regulations is valid, *Udall* v. *Tallman*, 380 U.S. 1 (1965), and that review of administrative action is limited to a consideration of whether that action was arbitrary, capricious, or an abuse of discretion. *Rochester Telephone Corp.* v. *United States*, 307 U.S. 125, 146 (1939).

In accordance with the above-described principles, the Courts have generally recognized the validity of the freezing of assets of foreign countries and their nationals pursuant to the Trading with the Enemy Act. In *Nielsen* v. *Secretary of Treasury*, 424 F.2d 833 (D.C. Cir. 1970), plaintiffs, who were owner of 75% of the stock of a Cuban corporation, sought the unblocking of the assets in the United States of that corporation. Plaintiffs were Cuban refugees who had left Cuba before the effective date of the Cuba Assets Control Regulations; hence they themselves were not blocked under the Regulations. They claimed, as plaintiffs do here, that they had an interest in the assets and, being unblocked nationals, they were entitled to those assets.

> In effect applicants argue that they are entitled to require the government to disregard the entity of the Cuban corporation or its interest in the

> property held in the name of the corporation, and are *entitled to have the rules regulating transfer of that property determined by reference to the position of the shareholders. Nielsen, supra* at 841. [Emphasis added].

The Court, in dismissing their complaint, held that such a result was not required by either the Constitution or the Trading with the Enemy Act.

In *Cheng Yih-Chun* v. *Federal Reserve Bank*, 442 F.2d 460 (2d Cir. 1971), this Court recognized the validity of the Foreign Assets Control Regulations, a set of regulations substantially identical to the Regulations at issue here but which applied to assets in the United States of mainland Chinese nationals. The plaintiff's father had died in Shanghai prior to the issuance of the regulations, leaving assets in a New York bank. Five heirs lived in Shanghai. The Sixth, the plaintiff, lived in Hong Kong. The estate was not blocked because the decedent had died prior to the promulgation of the regulations. However, the share of the heirs in Shanghai was blocked upon the issuance of the regulations by virtue of their residence in Shanghai on the effective date of the regulations. After the blocking date, the Shanghai heirs purported to release their interest in the estate to the plaintiff and he applied, as an unblocked national, for the release of *all* the assets held by the New York bank. The Court, held that as of the blocking date, the interest of the Shanghai heirs could not be transferred without a license and the purported transfer of their interest to the applicant was null and void.[7]

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[7] In *Chase Manhattan Bank* v. *United China Syndicate, Ltd.*, 180 F. Supp. 848 (S.D.N.Y. 1960), a case also involving the Foreign Assets Control Regulations, the Court recognized that it could not enter a default judgment which would, in effect, have transferred property blocked by the regulations. Such a judgment would be null and void because it was not licensed by the Treasury Department as required by the regulations.

The Court in *Real* held that Congress did not intend the Trading with the Enemy Act to block the estate of a deceased Cuban national. A similar argument was made in *Schill* v. *McGrath, supra*, where plaintiff claimed the Act was not intended to foreclose those who are American citizens. But the Court, after noting that the Act was directed at property rather than claimants, stated:

> If Congress had intended the bar to be applicable only to present nationals of Japan or Germany, it could have used appropriate language to obtain that result. However, the clear language used in Section 39 makes no exception in the case of one now a citizen of the United States. Since the Section is applicable to friendly aliens, there is no logical reason why it should not be applicable to those who have had the good fortune to become United States citizens. *Schill* v. *McGrath, supra* at 342.

In conclusion, it is clear that the Regulations at issue in the case at bar are authorized within the broad grant to discretion delegated by Congress to the executive branch by the Trading with the Enemy Act.

POINT II

The District Court was correct in holding that the blocking of assets in the United States which belonged to a Cuban national on the effective date of the Cuban Assets Control Regulations is not unconstitutional.

Plaintiffs next argue that the blocking of the assets in question here is a deprivation of property without due process of law, and hence that the Trading with the Enemy Act and consequently the Cuban Assets Control

Regulations promulgated thereunder, are unconstitutional. This argument has, however, been often rejected by the Courts. See *Sardino* v. *Federal Reserve Bank of New York*, 361 F.2d 106 (2d Cir. 1966), *cert. denied*, 385 U.S. 398 (1966); *Teague* v. *Regional Commissioner of Customs*, 404 F.2d 441 (2d Cir. 1968), *cert. denied*, 394 U.S. 977 (1969); *Nielsen* v. *Secretary of Treasury*, *supra*.

The plaintiff in *Sardino* v. *Federal Reserve Bank of New York*, *supra*, sought the release of some $7000 which he had placed in a savings account in a New York bank and which had been blocked under the Cuban Assets Control Regulations. The court noted that plaintiff Sardino, a Cuban residing in Cuba, was entitled to the protection of the Fifth Amendment against taking without just compensation of property which he owned within the United States. 361 F.2d at 111. However, the Court emphasized that it does not follow that "the United States must blind to the acts of the county of which he is a national; the Constitution protects the alien from arbitrary action by our government but not from reasonable response to such action by his own." *Id.* The Court analyzed the reasons authorizing governmental seizure of assets and specifically noted, as one consideration supporting the constitutionality of the freezing order, the "long history of governmental action compensating our own citizens out of foreign assets in this county for wrong done them by foreign governments abroad." 361 F.2d at 112. Examples of such action cited in *Sardino* include the Treaty of Berlin, 42 Stat. 1939, 1940-41 (1921), terminating World War I with Germany, which continued the vesting of title to enemy assets in the United States government until the German government had satisfied all war claims of our citizens. Similarly, the property of nationals of Bulgaria, Hungary

and Roumania, had been blocked prior to World War II. See Exec. Order No. 9389 of April 10, 1940. However, the treaties of peace with those countries following World War II provided that title to that property should vest in an agency or officer of the United States and should be used to pay claims of United States nationals against those countries. 22 U.S.C. §§ 1631a, 1641.

In *Propper* v. *Clark*, *supra*, the Supreme Court, noted that the "freezing order" issued on June 14, 1941 with respect to Austrian property served the purpose of immobolizing the assets so that title to them might not shift until the Government could determine whether those assets were needed "to compensate our citizens or ourselves for the damage done by the governments of the nationals affected." 337 U.S. at 484. That determination is exactly the purpose which the Cuban Assets Control Regulations were designed to serve, and there can be no question of their constitutionality.

CONCLUSION

The order of the District Court granting defendant Simon's motion to dismiss the complaint and denying plaintiffs' motion for summary judgment should be affirmed.

Dated: Brooklyn, New York
January 31, 1977

Respectfully submitted,

DAVID G. TRAGER,
United States Attorney,
Eastern District of New York,
Attorney for Defendant-Appellee Simon,
225 Cadman Plaza East,
Brooklyn, New York 11201.

ALVIN A. SCHALL,
CONSTANCE M. VECELLIO,
Assistant United States Attorneys,
Of Counsel.

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AFFIDAVIT OF MAILING

STATE OF NEW YORK
COUNTY OF KINGS
EASTERN DISTRICT OF NEW YORK, ss:

EVELYN VALENTI, being duly sworn, says that on the 31st day of January, 1977, I deposited in Mail Chute Drop for mailing in the U.S. Courthouse, Cadman Plaza East, Borough of Brooklyn, County of Kings, City and State of New York, a BRIEF FOR APPELLEE SIMON of which the annexed is a true copy, contained in a securely enclosed postpaid wrapper directed to the person hereinafter named, at the place and address stated below:

Samuel Gursky, Esq.
342 Madison Avenue
New York, N.Y. 10017

Evelyn Valenti

Sworn to before me this
31st day of Jan. 1977

Carolyn N. Johnson

No. 41-[illegible]
Qualified in [illegible]
Term expires March 30, 19 77